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ALEXANDER L. STEVAS,
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81-1507
NO.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1981

ALAN FEINBERG,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

Whether the trial court committed reversible error in its jury charge by:

(a) marshalling the evidence after a specific representation to the contrary, thereby misleading counsel in the preparation of their summations;

(b) marshalling the evidence in a wholly unbalanced manner, by emphasizing only the most prejudicial evidence presented by the government; and

(c) denigrating the defense theory of the case by giving an erroneous instruction on willfulness.

PARTIES TO THE PROCEEDINGS

The parties to the proceeding in the United States Court of Appeals for the Second Circuit were petitioner Alan Feinberg, and Larry Levenson, Harry Gordon and Frank Pernice whose petition for certiorari numbered 81-1432 has been previously filed and docketed January 29, 1981.

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STATUTES CITED

26 United States Code §7201 2,3

26 United States Code §7206(1) 2

28 United States Code §1254(1) 2

18 United States Code §2 3

28 United States Code §1918(b) 3

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OCTOBER TERM, 1981

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UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner Alan Feinberg respectfully prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Second Circuit in this case.

Petitioner further prays that he be allowed to join in the petition and appendix of Larry Levenson, Harry Gordon and Frank Pernice, co-defendants upon the original trial and upon appeal to the United States Court of Appeals for the Second Circuit, numbered 81-1432 which has previously been filed and docketed on January 29, 1981 as if he were originally named a petitioner therein.

OPINION BELOW

The opinion of the Court of Appeals (Kaufman, Timbers and Meskill, J.J.) is as yet not reported, a copy of that opinion is contained in the appendix previously filed by co-defendants Larry Levenson, Harry Gordon and Frank Pernice (number 81-1432 filed and docketed on January 29, 1981) at page 27-29 of Appendix A thereof.

JURISDICTION

The judgment of the Court of Appeals was entered on November 30, 1981. The jurisdiction of this Court is invoked under 28 USC §1254(1) and Rule 20.1 of the Rules of this Court.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fifth Amendment to the United States Constitution.

The Sixth Amendment to the United States Constitution.

Title 26 United States Code §7201.

Title 26 United States Code §7206(1).

The pertinent text of the foregoing provisions is set forth in the petition of co-defendants, Larry Levenson, Harry Gordon and Frank Pernice (numbered 81-1432 filed and docketed on January 29, 1981) in Appendix B at pages 30 and 31.

PRELIMINARY STATEMENT

Petitioner Alan Feinberg and three others were jointly indicted in an eleven count indictment. Alan Feinberg was named only in Counts I and II which charged conspiracy to evade corporate income tax in violation of Title 18 United States Code §371 and Title 26 United States Code §7201 (Count 1) and aiding and abetting the evasion of corporate income tax in violation of Title 26 United States Code §7201 and Title 18 United States Code §2 (Count 11).

In 1979 Appellant Alan Feinberg was an accountant whose clientele included Platos Retreat Inc. Mr. Feinberg was not an owner of Plato's nor did he have any financial interest in Plato's.

After a jury trial appellant was acquitted of the conspiracy count (Count 1) and convicted of the charge of aiding and abetting the evasion of corporate income tax (Count 11). Appellant was sentenced to a term of imprisonment of four (4) years and fined $10,000.00. Appellant was further taxed with the costs of the prosecution pursuant to Title 26 United States Code §7201 and Title 28 United States Code §1918(b).

STATEMENT OF THE CASE

Petitioner Alan Feinberg joins in the Statement of the Case as presented in the petition of co-defendants, Larry Levenson, Harry Gordon and Frank Pernice (numbered 81-1432 filed and docketed on January 29, 1981 at pages 2-8.

REASONS FOR GRANTING THE WRIT

Petitioner Alan Feinberg joins in the Argument as presented in the petition of co-defendants, Larry Levenson, Harry Gordon and Frank Pernice (numbered 81-1432 filed and docketed on January 29, 1981) at pages 8-24.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: Brooklyn, New York
February 8, 1982

Respectfully submitted,

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